

**NORTH CAROLINA EDUCATION LOTTERY**

**INVITATION TO BID**

**ELECTRONIC DIGIT DISPLAY SYSTEMS AND RELATED SERVICES**

**ITB # LC-000006**

**April 5, 2006**

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## PART I- GENERAL INFORMATION

### 1.1 INTRODUCTION

The North Carolina State Education Lottery ("**NCEL**") is soliciting bids through this procurement (the "**Procurement**") and Invitation To Bid ITB # LC-000006 ("**ITB**") is to invite responsible bids ("**Bids**") from qualified and reputable vendors ("**Vendors**") to create, install and maintain an electronic digit display systems (individually a "**System**" and collectively, the "**Systems**") and related services as outlined in this ITB (collectively, the "**Services**") for outdoor display billboards.

The NCEL currently intends to execute only one contract (the "**Contract**") as a result of this Procurement; provided, however, nothing obligates the NCEL to sign any Contract, or only one Contract, and the NCEL may do whatever it determines in their sole discretion to be in the best interests of the NCEL and the State of North Carolina.

The NCEL requires the Vendor that is selected to provide the System and Services contemplated by this ITB (the "**Successful Vendor**") to develop, install, and maintain the Systems and to provide all Services and do all things necessary to enable the NCEL to achieve all of its objectives as set forth in this ITB by the deadline for online ticket sales which are scheduled to begin on or before May 30, 2006 (the "**Online Start Date**").

All Bids and the Contract are automatically subject to the requirements of, and must comply with, the North Carolina State Lottery Act (the "**Act**") and the regulations, policies and procedures of the NCEL as they may be adopted or amended from time to time (collectively, the "**Regulations, Policies and Procedures**"), as they may be changed from time to time. Copies of these documents may be obtained either from the NCEL or through a link on the NCEL's official web site, [www.lottery.nc.gov](http://www.lottery.nc.gov) (the "**Website**").

### 1.2 BID SUBJECT TO PUBLIC RECORDS LAWS

All Bids, data, materials and documentation originated, prepared and submitted to the NCEL pursuant to this ITB shall belong exclusively to the NCEL and may become available to the public in accordance with the North Carolina Public Records Act as provided in G.S. §132-1 et. seq. (the "**Public Records Laws**"). The NCEL will make reasonable attempts to maintain, in accordance with the Public Records Laws and the Act and all applicable laws of its domicile, the State of North Carolina and the United States of America (all of the forgoing being collectively defined as, the "**Applicable Laws**"), the confidentiality of any trade secrets or confidential information that meets the requirements of G.S. §132-1.2 of the Public Records Laws (collectively, "**Confidential Information**") if such Vendors properly and conspicuously identify the particular data or other materials which are Confidential Information in accordance with the Public Records Laws.

### 1.3 REJECTION OF BIDS AND CANCELLATION OF ITB; REISSUE OF ITB

Issuance of this ITB does not constitute a commitment on the part of the NCEL to award or execute a Contract. The NCEL retains the right, in its sole discretion, at any time to reject any or all Bids, in whole or in part, and to cancel, or cancel and reissue, this ITB, before or after receipt and opening of Bids in response thereto, or take any other actions, if it considers it to be in the best interests of the NCEL.

### 1.4 BID VALIDITY; INCURRED EXPENSES

All Bids shall remain valid for one hundred and eighty (180) calendar days (the "**Bid Offer Period**") from 4:00 p.m. Eastern Standard Time ("**EST**") April 19, 2006 (the "**Bid Deadline**"). A Bid constitutes an offer by the Vendor to contract with the NCEL in accordance with the terms of the Bid and this ITB, which offer

is irrevocable for the duration of the Bid Offer Period and may not be withdrawn or amended during the Bid Offer Period without the written consent of the NCEL. The NCEL shall not be liable or responsible for any costs, expenses, reimbursements or fees incurred by a Vendor in preparing and submitting a Bid or in performing any other action in connection with this Procurement.

## **PART II - BID PROCESS**

### **2.1 CONTACT PERSON**

The sole point of contact (the **"Contact Person"**) for inquiries and additional information concerning this ITB (ITB # **LC-000006**) and Procurement will be Melva McNeil, who can be reached as follows:

**Email: melva.mcneil@ncmail.net**

**Fax: 919-233-7069**

**Re: ITB # LC-000006**

North Carolina Education Lottery (ITB # **LC-000006**)  
Electronic Digit Display Systems and Related Services ITB  
111 Corning Road, Suite 250  
Cary, NC 27511

No direct or indirect contact or other solicitation initiated by Vendors or their representatives should occur with any NCEL employee other than the Contact Person.

### **2.2 INQUIRIES**

All inquiries regarding this ITB must be submitted in the form of questions or requests for clarification (collectively, the **"Questions"**). Such Questions must be in writing and received by the Contact Person identified in Section 2.1 of this ITB on or before 4:00 p.m. EST on April 11, 2006 (the **"Question Deadline"**). The NCEL's responses (the **"Answers"**) to Questions properly received prior to the Question Deadline will be posted on the NCEL's Website.

### **2.3 BID SUBMISSION AND FORMAT**

Bids must be received by the Contact Person by no later than the Bid Deadline in sealed envelopes or containers. A Vendor should submit a signed original and five (5) reproduced complete copies of its Bid. Late Bids will not be accepted. Vendors should provide responses for all numbered items in Parts IV, V and VI that request or call for a response or information, and responses and signatures are required for any Attachments referenced within, or attached to, this ITB that are due with the Bid. Bids shall be complete and must convey all of the information requested by the NCEL. Also, the Bid must designate a single authorized official from one of the entities to serve as the sole contact between the NCEL and the Vendor.

### **2.4 CHANGES, MODIFICATIONS AND CANCELLATION**

The NCEL reserves the right, in its sole discretion, at any time prior to the Bid Deadline to make changes to this ITB by issuance of written addendum(s) or amendment(s) or to cancel all or part of this ITB and Procurement. Any addendum(s), amendment(s) or cancellation(s) will be posted on the NCEL's Website.

### **2.5 BID EVALUATION**

A variety of factors shall be considered by the NCEL in determining the Successful Vendor it believes provides the best overall solution at a fair and reasonable price and consistent with the goals and

objectives of the NCEL. Thus, while Vendors are strongly encouraged to offer the lowest price and total cost and highest value possible, the Vendor offering the lowest price and total cost may not be selected as the Successful Vendor. The NCEL will conduct a fair, comprehensive and impartial evaluation of all Bids deemed responsive using an evaluation committee (the "**Evaluation Committee**") selected by the Director. The Evaluation Committee may request clarifications or answers to any questions it may have of a Vendor as a result of any information or representations contained in its Bid or otherwise identified, and may ask a Vendor to address technical questions or seek additional information regarding any Bid before completing the initial evaluation. The NCEL shall notify the Successful Vendor in writing of the Contract award and the Successful Vendor must commence work immediately following notification of the award, regardless of whether or not a Contract has been signed.

## 2.6 DISPUTE PROCEDURE

All claims and disputes, including but not limited to protests related to this ITB, the Procurement and the award of the Contract to the Successful Vendor shall be handled solely and exclusively under and in accordance with the North Carolina Education Lottery Dispute Resolution Procedures (the "**Dispute Procedures**"), as adopted and/or amended from time to time by the NCEL Commission. Any Vendor that submits a Bid hereby expressly acknowledges and agrees that: (a) the Dispute Procedures represent the exclusive procedure and the exclusive forum for binding resolution of all claims, disputes, complaints and Dispute Resolution Requests of any kind relating in any way to any ITB, Procurement, Contract, offer, quote, Bid or agreement entered into by the NCEL; (b) it is estopped from objecting to any court, agency or other entity as to the Dispute Procedures being such sole and exclusive forum for binding resolution; and (c) it agrees to be completely, solely and irrevocably bound by such Dispute Procedures. In addition, each Vendor submitting a Bid irrevocably waives any claim it might have had to protest or object to this ITB or its contents.

## 2.7 SUMMARY OF KEY DATES

The NCEL reserves the right to change any dates and schedule contained in this ITB, including those shown below. If changes are made, the changes will be communicated on the NCEL's Website.

<b>April 5, 2006</b>	ITB Issuance Date
<b>April 11, 2006</b>	Questions Deadline 4:00 p.m. EST
<b>April 14, 2006</b>	Answers to Written Questions Posted on the Website
<b>April 19, 2006</b>	Deadline for submission of Bids 4:00 p.m. EST

### **DELIVERY ADDRESS:**

North Carolina Education Lottery Commission  
Electronic Digit Display Systems and Related Services ITB  
111 Corning Road, Suite 250  
Cary, NC 27511

<b>April 25, 2006</b>	Target date for Commission Decision of Successful Vendor followed by Contract Execution
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## 2.8 BID CONSTITUTES OFFER

By submitting a Bid, a Vendor agrees to be governed by the terms and conditions set forth in this ITB, and any amendments thereto, and further agrees that the Contract will incorporate the terms and conditions of this ITB and any amendments hereto and the Questions and Answers, the Vendor's Bid and

any terms and conditions subsequently negotiated with such Vendor. A Vendor submitting a Bid must complete and submit, as part of its Bid, the Vendor Certification Form included as *Attachment A*, and made a part hereof.

## **2.9 NEGOTIATION AND EXECUTION OF CONTRACT**

A Successful Vendor under this ITB shall negotiate and execute a Contract containing such terms and conditions as shall be satisfactory to the NCEL. The occurrence of negotiations with any Vendor(s) conveys no right or status on such Vendor(s). By submitting a Bid, each Vendor acknowledges and agrees that the NCEL may negotiate with one or more Vendors, under such circumstances, at such times and in such a manner as it determines to be in the best interests of the NCEL.

## **2.10 NONEXCLUSIVE RIGHTS**

Nothing in this ITB or any Contract shall preclude the NCEL from purchasing other products or services as the NCEL, in its sole discretion, shall determine.

# **PART III – CONTRACTUAL TERMS AND CONDITIONS**

## **3.1 GOVERNING LAW**

This Procurement and any Contract resulting from this ITB shall be governed by and construed in accordance with the laws of the State of North Carolina, including the Act. Any and all claims or disputes arising under or in connection with this ITB or the Contract shall be exclusively governed by the Dispute Procedures, as they may be adopted or amended from time to time by the Commission.

## **3.2 CONTRACT ELEMENTS**

The terms of this ITB, as may be amended by the NCEL from time to time, and the Bid of the Successful Vendor will be incorporated into and form a part of the Contract, as will the Questions and Answers. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the Contract, this ITB and any amendments thereto as well as Answers to the Questions, and finally the Bid of the Successful Vendor, all of which must comply with the Act. The NCEL requests each Vendor to submit with its Bid its current form of contract for the System and Services for consideration by the NCEL. The NCEL is not bound to accept the submitted contract and the NCEL reserves the right to negotiate the submitted form of contract and offer such Contract to the Successful Vendor as the NCEL determines is in the best interests of the NCEL.

## **3.3 SUBCONTRACTING; ASSIGNMENT; COMPLIANCE**

The Successful Vendor is prohibited from subletting, conveying, assigning or otherwise disposing of the Contract, its rights, duties, obligations, title, or interest therein, or its power to perform the Contract to any person or entity without the prior written approval of the NCEL. The Successful Vendor shall comply with all applicable rules, procedures and regulations as adopted and/or amended from time to time by the NCEL under the Act, including, but not limited to, the Regulations, Policies and Procedures of the NCEL and Applicable Laws. The Successful Vendor warrants that it currently is, and will at all time during the term of the Contract remain, lawfully organized and constituted under all Applicable Laws.

### 3.4 TERM OF CONTRACT

The NCEL currently expects that the initial term of the Contract shall be for a period of five (5) years from the effective date thereof (the “**Initial Term**”). After the Initial Term, the Contract shall automatically renew annually for up to five (5), one (1)-year “**Renewal Terms**” unless the NCEL sends a notice of termination at least thirty (30) days before the end of the then-current Initial Term or Renewal Term.

### 3.5 PATENTS, COPYRIGHTS, TRADEMARKS, TRADE SECRETS AND OTHER INTELLECTUAL PROPERTY; INTELLECTUAL PROPERTY INDEMNIFICATION

The Successful Vendor represents and warrants that its System, Services and performance under the Contract and all other deliverables, written materials, designs, tangible or intangible materials, intellectual or other property or other work product of any kind or nature produced, revised, created, modified or prepared by the Successful Vendor in connection with the Contract, this ITB or Procurement or for the NCEL (collectively, the “**Work Product**”) does not and will not infringe any patent, copyright, trademark, service mark or other intellectual property rights of any other person or entity, and that it and they will not constitute the unauthorized use or disclosure of any trade secret of any other person or entity.

The Successful Vendor shall indemnify and hold harmless the NCEL, its officers, Commissioners, agents, retailers and employees and the State of North Carolina from and against any and all suits, damages, expenses, losses, liabilities, claims of any kind, costs or expenses of any nature or kind, including, without limitation, court costs, attorneys’ fees and other damages, arising out of, in connection with or resulting from the development, possession, provision, license, lease, modification, disclosure or use of any System, Services or Work Product.

### 3.6 WARRANTIES

The Successful Vendor represents, warrants and agrees that all Systems provided and Services rendered pursuant to this ITB, its Bid and the Contract have been and shall be prepared or done in a workmanlike manner consistent with the highest standards of the industry in which the Systems are provided and Services are normally performed.

### 3.7 BOOKS AND RECORDS; AUDIT REQUIREMENTS

The Successful Vendor shall maintain its books, records and other evidence pertaining to the Contract in accordance with the Act, and Applicable Laws records retention requirements. The Successful Vendor shall maintain all documentation and records as required by the Act and other Applicable Laws and shall be subject to audit or inspection at any reasonable time and upon reasonable notice by the NCEL, or its duly appointed representatives, including, without limitation, the NCEL’s auditors, the Office of the State Controller, the North Carolina State Auditor or any other appropriate representative of North Carolina state government. Specifically, without limitation, the Successful Vendor shall comply with the requirements of G.S. §18C-122 regarding independent audits.

### 3.8 RECORD CHECK FEE AND PERFORMANCE BOND

Contemporaneously with the delivery of a Bid, each Vendor must submit a check or other similar financial instrument of immediately available funds (the “**Record Check Fee**”) to the NCEL to cover the cost of criminal record check conducted under G.S. §114-19-6 pursuant to §18C-151(a)(3) of the Act.

The Record Check Fee to cover the cost of the criminal record check that must be submitted by EACH Vendor with their Bid shall be in the amount equal to the sum of:

- i) Seven Hundred Fifty Dollars (\$750.00) (the “**Corporate Search Fee**”) for the



Vendor (inclusive of any parent company of the Vendor); plus

- ii) Two Hundred Dollars (\$200) (the “**Individual Search Fee**”) for each officer and director of the Vendor and for each shareholder of the Vendor who owns an interest of five percent (5%) or more in the Vendor.

Contemporaneously with the execution of the Contract with the NCEL, only the Successful Vendor shall provide a performance bond or letter of credit from a bank or credit provider acceptable to the NCEL and in a form reasonably acceptable to the NCEL (the “**Performance Bond**”) in the amount of not less than Fifty Thousand Dollars (\$50,000). The amount of the Performance Bond may be reduced after the third (3rd) year of the Contract term, in the sole discretion of the NCEL.

### **3.9 INSURANCE**

The Successful Vendor shall be required to maintain at least the following types and amounts of insurance during the term of the Contract from reputable and solvent carriers reasonably acceptable to the NCEL:

- General liability insurance in the amount of at least \$1,000,000;
- Workers Compensation Insurance at or above levels required by the State of North Carolina; and
- Such other types and amounts of insurance as the NCEL shall from time to time reasonably require.

The Successful Vendor shall make the NCEL an additional insured on all of its applicable insurance policies and shall provide the NCEL with certificates of insurance within ten (10) days after the Contract date and evidence of any renewed bonds or insurance policies within five (5) days prior to the expiration of then existing bonds or insurance policies during the term of the Contract.

### **3.10 TAXES, FEES AND ASSESSMENTS**

The NCEL shall have no responsibility whatsoever for the payment of any federal, state or local taxes which become payable by the Successful Vendor or its subcontractors, joint venturers, agents, officers or employees. The Successful Vendor shall pay and discharge all such taxes when due.

### **3.11 NEWS RELEASE**

The Successful Vendor shall not issue any news releases or participate in any media interview pertaining to this ITB, Procurement or the Contract without the express prior written consent of the NCEL in each instance, and then only in cooperation with the NCEL.

### **3.12 CONTRACT CONVERSION; USUFRUCT**

It is contemplated that the NCEL, prior to the expiration of the term of the Contract resulting from this ITB, will award a new contract to an electronic digit provider in order to secure billboard displays and related services for the NCEL. The parties understand and agree that the NCEL may utilize the last specified number of days of the Contract term, for transitioning the provision of such services. The Successful Vendor will cooperate fully with this process and any transition.

The continuation of all Systems and Services without any interruption is of the highest priority to the NCEL. Accordingly, the Successful Vendor agrees to cooperate with any subsequent new Vendor to

ensure the continuation, or the seamless transition, of the digit displays Systems and Services without any interruption to the NCEL. If, for any reason other than breach of Contract by the NCEL, the Successful Vendor should become unable to service the Contract resulting from this ITB, the NCEL shall acquire a usufruct in all Systems, Work Product and other contractual items owned, leased or licensed by the Successful Vendor in conjunction with the Contract which are necessary to provide such services.

### **3.13 NONDISCRIMINATION**

The Successful Vendor hereby covenants and agrees that no person shall be excluded from participation in, or be denied benefits of, the Contract, or be excluded from employment, denied any of the benefits of employment or otherwise be subjected to discrimination on the grounds of handicap or disability, age, race, color, religion, sex, national origin or ancestry, or any other classification protected by federal, North Carolina state constitutional or statutory law or other Applicable Laws.

## **PART IV – REQUIRED INFORMATION**

### **4.1 MANDATORY COMPONENTS; VENDOR COMMITMENT**

The integrity of the NCEL is essential. The NCEL must maintain control over all functions and be assured that they are performed to provide the greatest long-term benefit to the State of North Carolina, the greatest integrity for the NCEL and the best service and products for the public, all in a manner consistent with the dignity of the State of North Carolina. A Vendor must sign and submit the Vendor Certification Form included as *Attachment A* and made a part hereof. The form must be signed by a person duly authorized to legally bind such Vendor.

### **4.2 VENDOR CONTACT PERSON**

A Vendor shall provide the name, address, telephone number, e-mail address and facsimile number of the person to provide notification or contact concerning questions regarding its Bid.

### **4.3 BACKGROUND INFORMATION**

The NCEL will investigate, at a minimum, the financial responsibility, security and integrity of any Vendor that submits a Bid. A Vendor must complete and submit as part of its Bid the Contract Compliance and Financial Disclosure Form, included as *Attachment B* and made a part hereof. Vendors must also fully comply and cooperate with all investigations conducted under G.S. §18C-151(c) or §18C- 152 and other applicable Sections of the Act or Applicable Laws.

A Vendor must complete and submit, as part of its Bid, for itself and all of the individuals listed in this paragraph, the Authorization for Investigation Form, included as *Attachment C* and made a part hereof, and Consent Form, included as *Attachment D* and made a part hereof, in both cases to allow the NCEL access to the criminal history of the Vendor and other relevant individuals and entities. Such Authorization for Investigation Form and Consent Form shall authorize access to the criminal history and backgrounds of the following persons, as well as the Vendor, as applicable: (i) if the Vendor is a corporation, the officers, directors and each person who owns five percent (5%) or more of the equity interests in any member of a Vendor Team; (ii) if the Vendor is a partnership or joint venture, all of the general partners, limited partners or joint ventures; and (iii) for any Vendor, any person who can exercise control or authority, or both, on behalf of the Vendor.

### **4.4 DISCLOSURE OF LITIGATION AND LEGAL MATTERS**

A Vendor should include in its Bid a disclosure of any pending or overtly threatened civil or criminal litigation or indictment involving such Vendor, and if the Vendor is a corporation, the Vendor should

provide the same information for all of its officers, directors and each person who owns five percent (5%) or more of the equity interests in Vendor. A Vendor must also disclose any civil or criminal litigation or indictment involving any of its subcontractors participating in its Bid. Specifically, the Vendor must disclose, on behalf of itself and each of the persons or entities described in G.S. §18C-152(b), all of the items and information described in G.S. §18C-152(c). This disclosure requirement is a continuing obligation, and any litigation commenced after a Vendor has submitted a Bid under this ITB must be disclosed to the NCEL in writing within five (5) days after it is filed.

#### **4.5 FINANCIAL SOUNDNESS**

Under the Act, A Vendor must provide adequate information to permit an evaluation of its financial responsibility, stability and its capabilities to undertake and complete satisfactorily any Contract awarded and executed pursuant to this ITB. In that regard, a Vendor should submit a copy of its last three (3) years financial statements that have been audited by an independent public accounting firm, or if audited financial statements are not regularly produced, the NCEL will accept financial statements that are reviewed (rather than audited) provided that the financial statements are certified as being accurate by an executive officer of Vendor.

### **PART V – BID CONTENT**

#### **5.1 VENDOR BACKGROUND, EXPERIENCE AND CAPABILITIES**

The Vendor must submit a description of its background, experience, business, System and Services and provide a list of all current customers for which it provides systems or services similar to the System or Services. The Vendor should list the accounts by approximate annual billing size (beginning with the largest account) and should include for each account a description of the type of System implemented, Services performed, the number of billboards serviced, the name of the key contact person for each account and such contact person's telephone number. The NCEL reserves the right to contact any of the contact persons provided pursuant to this Section. The Vendor must also disclose in its Bid lists of the following customers of similar systems or services to the System or Services in the fields of: (a) fuel service; (b) gaming; (c) lotteries; and (d) State Government clients.

#### **5.2 EXAMPLES OF SYSTEMS AND SERVICES**

The Vendor shall submit with its Bid as much technical and other information as may be necessary for the NCEL to properly evaluate the System and Services proposed by the Vendor. At least three (3) examples of successful implementations of similar Systems and the performance of similar Services, within the last two (2) years, should also be provided, including photographs of such Systems and billboards. Specific information should be provided in the Bid about the Vendor's experience at performing repair and maintenance Services for its Systems. Any warranty or other claims made by any customer in the last three (3) years with respect to the System or any Services should also be described in the Bid.

#### **5.3 SCOPE OF SERVICES**

##### **5.3.1 INTRODUCTION**

The current anticipated online game product mix during the first twelve (12) months following the Online Start Date consists of Powerball (a multi-state game with a rolling jackpot) and at least one daily online game. The NCEL currently expects that electronic digits will be changed by the NCEL, while the NCEL's advertising vendor will be responsible for billboard purchases and vinyl production. The NCEL expects to begin on the Online Start Date with an initial inventory of

twenty (20) outdoor billboards containing the System throughout the state, with an expected increase of up to fifty (50) or more billboards during the Initial Term of the Contract.

### 5.3.2 VENDOR'S RESPONSIBILITIES

Subject to the instructions and decisions of the NCEL, the Successful Vendor will be responsible for, and should in its Bid carefully describe how it will perform, the following:

- a) Building, installing and maintaining electronic jackpot digit Systems that will be mounted onto outdoor billboards throughout the State of North Carolina, including but not limited to:
  - i) Building digit boxes that will contain three full digits, per creative instructions provided by the NCEL and its advertising agency, and providing the NCEL with a selection of fonts and digits sizes from which to choose;
  - ii) Providing for the installation of digit boxes on billboards identified by the NCEL, and working with the NCEL and its outdoor billboard company providers ("**Billboard Providers**") in developing installation schedules; and
  - iii) Providing timely repair of Systems and equipment, and an ongoing maintenance program to keep the digit Systems clean and fully operational;
- b) Coordinating with the NCEL and Billboard Providers throughout the State of North Carolina to ensure that schedules and deadlines are adhered to for installation, and that on-going mechanical and/or storm damage repairs are performed, and requirements by Billboard Providers are complied with in order to minimize risk of liability;
- c) Providing the NCEL with an installation plan and schedules for a May 30, 2006 Online Start Date;
- d) Providing a satellite uplink system to change all digits on all billboards throughout the state simultaneously from a central location at the NCEL and/or through the Multi-State Lottery Association;
- e) Adding digit Systems to additional billboards as they are identified by the NCEL;
- f) Removing and re-installing the digit Systems following creative vinyl changes or vinyl replacements;
- g) Providing System software updates as they become available or necessary;
- h) Providing as a part of the System a validation system to ensure that all billboards properly reflect all jackpot changes and a procedure for correcting erroneous digit System displays;
- i) Providing a miniature, operational replica of the digit System display to be housed at NCEL headquarters for real-time assessment of digit updates;
- j) Providing the NCEL with status reports, contact reports, minority compliance reports and other reports as requested by the NCEL, and interacting with the NCEL staff and other marketing vendors to help achieve the NCEL's overall objectives and goals; and
- k) Removing the digit Systems upon termination of the Contract.

## **5.4 COMMITMENT TO NONDISCRIMINATION AND MINORITY PARTICIPATION**

The Act has specific references to minority participation in the formation and operation of the NCEL and requires compliance with Article 8 Chapter 143 as applicable. The NCEL strongly encourages participation by, and involvement of, minority-owned businesses. In order to achieve or exceed the goals established by the Act and Applicable Laws, and to provide equal business opportunities in the procurement process, the NCEL encourages Vendors to contract with minority-owned businesses whenever and wherever possible. The NCEL wishes to make every reasonable effort to utilize minority-owned businesses when opportunities exist. The NCEL will take active steps to encourage full participation of qualified, capable, competent and competitive minority-owned businesses, possibly including, but not limited to, the implementation of a minority business participation outreach plan, utilizing media likely to inform potential minority businesses of the bid being sought and work with the Office of Historically Underutilized Businesses to identify minority businesses that have previously indicated an interest in the procurement process with respect to the lottery industry. Given the NCEL policy regarding participation of minority businesses and the express provisions of the Act, a Vendor shall carefully consider the inclusion, of, and shall commit not to discriminate against, minority businesses in the development of its Bid and provisions of its Services.

### **5.4.1 MINORITY BUSINESSES PARTICIPATION**

Each Vendor should describe in its Bid what actions it currently takes, and will agree in the future to take, in the areas of: (a) utilizing minority-owned businesses; (b) encouraging full participation of qualified, capable, competent and competitive minority-owned businesses; (c) assisting minority businesses or minority persons; and (d) any plans to continue to provide interested minority businesses with adequate information about any subcontracting opportunities. Bids should describe what minority businesses the Vendor uses or intends to use. To facilitate that process, *Attachment E* (Identification of Minority Business Participation) should be completed and included with each Bid. Any additional and supplemental information in this area is also highly encouraged.

### **5.4.2 NON-DISCRIMINATION**

Each Vendor should describe in its Bid what actions it currently takes, and will agree in the future to take, in the areas of: (a) ensuring a workplace free of all discrimination on the basis of race, color, religion, national origin, age, sex, disability or otherwise; (b) ensuring a diverse workforce and providing equal opportunities; and (c) ensuring and maintaining a work environment free of harassment, intimidation and coercion.

### **5.4.3 NONCOMPLIANCE WITH EQUAL BUSINESS OPPORTUNITY PROGRAM**

The Successful Vendor may be required to attend a conference with the NCEL from time to time to review the project scope and to review minority business participation as outlined hereinabove. Noncompliance with any of the foregoing requirements of this ITB, the Act or Applicable Laws may result in suspension from bidding, prohibition from contracting, cancellation of contracts or monetary penalties.

## **PART VI - COST**

### **6.1 PRICING FORMULA**

The NCEL currently expects that Successful Vendor shall be compensated for all Systems and Services based on a fixed monthly lease amount agreed upon by the NCEL; provided, Vendors are encouraged to offer, in addition to a monthly lease price, alternative pricing terms if they wish. Vendors are reminded that the cost quotation should cover all of the Systems and Services and other items covered and required by this ITB and Procurement, as well as other Services deemed necessary by the Vendor, to be provided by the Successful Vendor during the entire term of the Contract. All Services required by this ITB and Procurement must be included in such fee, including, without limitation:

- Costs for creation, installation, verification and maintenance of a 3-digit jackpot System display on an initial expected inventory of twenty (20) outdoor billboards containing the System throughout the state, with an expected increase of up to fifty (50) or more billboards during the Initial Term of the Contract;
- Cost for a lease program based on a 5-year commitment with the ability to add digit Systems to the program as additional outdoor billboards are identified;

### **6.2 ADDITIONAL PRICING INFORMATION**

Vendors shall include in its Bid any supplemental, one-time costs for removal and re-installation of digit Systems following creative vinyl changes or vinyl replacements, if not covered by the monthly lease amount. In addition, Vendors shall include a breakdown of the monthly lease cost and a comparison to purchase price, and a purchase price option during the term of the Contract and upon its termination.

### **6.3 PAYMENT**

The NCEL currently expects to pay the Successful Vendor on a monthly basis after processing its monthly invoice; provided, however, Vendors may propose any alternative method or schedule of payments, which may be considered during Contract negotiations with the Apparent Successful Vendor.

## ATTACHMENT A

### VENDOR CERTIFICATION

I hereby do certify as follows:

1. the proposing Vendor acknowledges and agrees that the initial terms and provisions included in the Bid submitted by the undersigned entity (the “**Vendor**”) are valid, accurate, irrevocable and binding for 180 days from the Bid due date (the “**Bid Offer Period**”) and, if an award is not made within the Bid Offer Period or if a Contract with the Successful Vendor is for any reason not executed within the Bid Offer Period, it shall be incumbent upon the Vendor to notify the designated Contact Person identified in Section 2.1 of the ITB in writing if it does not want its Bid to be further considered beyond the Bid Offer Period (i.e., in the event of a breach or termination, the NCEL may decide to return to the remaining Vendors’ Bids). Failure on the part of the Vendor to notify the designated Contact Person identified in Section 2.1 of this ITB will mean that its Bid remains valid even after the Bid Offer Period;
2. the Vendor would deliver the Systems and Services and related items according to the terms and provisions contained in the Bid if the NCEL wanted to accept the terms and provisions described in its Bid and all statements, representations or warranties in the Bid are, to the best of my knowledge, accurate and complete;
3. by submission of this Bid, the Vendor agrees to fully comply with all requirements of the ITB, and its separate parts, and any deviation noted in the Vendor’s submission may be the basis for rejection of its Bid by the NCEL without recourse;
4. the Vendor has read and understands the Act and all of the requirements contained in the ITB and any amendments thereto, the NCEL Answers to written Questions submitted by Vendors and its Bid, and agrees to be bound by all the terms and conditions contained in each of these documents, without exception;
5. the Vendor has taken appropriate steps to completely and fully familiarize itself with the requirements of the ITB and the Act in order to render full performance under any resulting relationship between the NCEL and Vendor;
6. the Vendor had the opportunity to submit written Questions regarding the ITB and thereby address any concerns related to the ITB, and therefore, the Vendor has availed itself of every opportunity to understand its obligations contained in the ITB and any amendments thereto, the Answers to written Questions and the Bid.

[Signatures on following page]

Full Name of Vendor: \_\_\_\_\_

Attachment A

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By: \_\_\_\_\_ Print Name: \_\_\_\_\_  
(Signature of Authorized Representative)

Title: \_\_\_\_\_ Date: \_\_\_\_\_



## **ATTACHMENT B**

### **CONTRACT COMPLIANCE AND FINANCIAL DISCLOSURE FORM**

*For Vendor, its parent company (if any) and any subcontractor that comprises at least twenty-five (25%) of the work performed in the Vendor's Bid (a "**Subcontractor**"), disclose all the same information for each such entity. (Vendor, and any parent company and Subcontractors, are sometimes herein referred to collectively as "**Vendor Team.**")*

[These pages may be copied and used as needed]

#### **PLEASE PROVIDE THE FOLLOWING INFORMATION:**

1. Full and proper names of business entities that are a part of the Vendor Team:
2. Type of legal entity and the state under whose laws each such business entity is organized:
3. Address:
4. Telephone Number, including area code:
5. List any trade names or assumed names used and attach verification of authorization to conduct business in the State of North Carolina:
6. List the name, address and telephone number of the Vendor Team's senior officers and directors and if the Vendor is a corporation list every beneficial owner of five percent (5%) or more of such entity's securities, as well as the same information for a parent corporation of such Vendor corporation if the parent corporation's shares are publicly traded:
7. List all states and jurisdictions (domestic and foreign) in which any member of the Vendor Team has applied for, sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license or lottery contract of any kind or has had fines or penalties assessed to his or its license, contract or operation and the disposition of such in each such state or jurisdiction. Include all facts or circumstances underlying the revocation or non-renewal of any lottery or gaming license or contract or any lottery or gaming license or application that has been either denied or is pending and has remained pending for more than six (6) months:
8. For each member of the Vendor Team, list the details of any finding or pleas, conviction or adjudication of guilt in a state or federal court, or in another jurisdiction, for any felony or any other criminal offense other than a traffic violation, including, but not limited to, felonies related to the security or integrity

of a lottery by, including: (a) charge; (b) date of proceeding; (c) custodian of records concerning this proceeding; and (d) outcome of proceeding:

9. For each member of the Vendor Team, list the details of any finding or plea, conviction or adjudication of guilt in a state or federal court, or in another jurisdiction, of any involving gambling, theft, computer offenses, forgery, perjury, dishonesty or for unlawfully selling or providing a product or substance to a minor, including, but not limited to, felonies related to the security or integrity of a lottery by, including: (a) charge; (b) date of proceeding; (c) custodian of records concerning this proceeding; and (d) outcome of proceeding:
10. For each member of the Vendor Team, list the details of any bankruptcy, insolvency, reorganization, and any pending or overtly threatened litigation, including, but not limited to: (a) filing or action; (b) date of filing or action; (c) court of filing or action; (d) date of discharge if bankruptcy; and (e) pending or overtly threatened litigation:
11. Does the Vendor Team or any individual member thereof have an ownership interest in any entity that has supplied consultation services under contract to the NCEL regarding this ITB? If yes, please provide details.
12. Does any "public officer" or employee of such public officer have an ownership interest of five percent (5%) or more in any member of the Vendor Team? If yes, please provide details.
13. List any conflict of interest with the products, promotions and goals contemplated by the NCEL that could result from other projects in which the Vendor Team or any of the staff members designated to work on the project are involved. Failure to disclose any such conflict may be cause for Contract termination or disqualification of the Bid.
14. List all lobbyists and consultants working on behalf of the Vendor Team in connection with this Bid or any subsequent Contract.

The following certification must be reproduced and signed:

### **Certification**

I, \_\_\_\_\_, hereby certify that I am duly authorized to act on behalf of the Vendor and Vendor Team. In that capacity, I hereby certify that the Vendor and all members of the Vendor Team have filed appropriate tax returns as provided by the laws of the State of North Carolina. I further warrant that the information contained in this Contract Compliance and Financial Disclosure Form is true and complete, and

Attachment B

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acknowledge that a finding that it is not true or complete may result in a cancellation of the Contract.

I further certify that the Vendor and each member of the Vendor Team recognizes and acknowledges that there are certain limitations on their activities, now and in the future, including, but not limited to, limitation on certain political contributions, limitation of the ability to submit bids, in response to subsequent request for proposals or invitations to bid issued by the NCEL, limitation on the ability to purchase lottery tickets. The restrictions on the ability to purchase lottery tickets and entering into contracts or other arrangements apply to the employees of the Vendor and the members of the Vendor Team as well as the members of all such employees' households, and the Vendor and each member of the Vendor Team will enforce such restrictions upon its employees and subcontractors.

Full Name of Vendor: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT C**

**AUTHORIZATION FOR INVESTIGATION**

I, \_\_\_\_\_, hereby authorize the North Carolina Education Lottery or its designee to conduct a Vendor background investigation (G.S. §18C-152), including my criminal and financial credit history. I hereby release all organizations, individuals, agencies, and other employees and agents from any liability that may result from their furnishing such information and authorize all organizations, individuals, agencies and their employees and agents contacted by the North Carolina Education Lottery or its designee to provide such information. A photocopy of this release will be valid as an original thereof, even through said photocopy does not contain an original writing of my signature.

Address: \_\_\_\_\_

\_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT D**

**CONSENT FORM**

I hereby authorize the North Carolina Education Lottery to request and receive any criminal history record information pertaining to me that may be in the files of any criminal justice agency.

\_\_\_\_\_  
Full Name Printed  
(First, Middle, Last – *no initials*)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Sex

\_\_\_\_\_  
Race

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date of Birth

\_\_\_\_\_  
SSN

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_  
Notary

**ATTACHMENT E**  
**Identification of Minority Business Participation**

I, \_\_\_\_\_,  
(Name of Vendor)  
do hereby certify that we will or do use the following minority business enterprises.

Firm Name, Address and Phone # Category	Work type	*Minority

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**)  
American Indian (**I**),  
Female (**F**), Socially and Economically Disadvantaged (**D**)